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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

TRACEY HAMPTON-STEIN,

Plaintiff and Appellant,

v.

WEST CENTRAL PRODUCE, INC. et al.,

Defendants and Respondents.

B202811

(Super. Ct. No. BC371452)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Tricia Ann Bigelow, Judge. Affirmed.

Law Office of Joseph C. Maher II for Plaintiff and Appellant.

Dykema Gossett and Alex W. Craigie for Defendants and Respondents.

Plaintiff Tracey Hampton-Stein appeals from an order striking her complaint as a SLAPP suit. We affirm.

FACTS AND PROCEEDINGS BELOW

Plaintiff was a “member/owner” of the limited liability company that owned and operated G. Garvin’s Restaurant in Los Angeles (Garvin’s). Defendant West Central Produce, Inc. (WCP) is a company that supplies fruits and vegetables to restaurants throughout Southern California. It supplied produce to Garvin’s.

Plaintiff’s complaint alleges that in October 2005 WCP filed a small claims action against Garvin’s and plaintiff to recover payment for produce it had delivered to Garvin’s. In its action, WCP alleged that plaintiff was liable as guarantor of Garvin’s payment. Plaintiff’s complaint alleges, however, that “in no way or under any circumstances did Plaintiff execute a personal guarantee for produce sold” to Garvin’s and moreover that WCP “knew or should have known” when it filed its small claims action “that Plaintiff never signed a personal guarantee and was not liable for any goods allegedly sold and delivered [to Garvin’s].” According to plaintiff’s complaint, WCP’s action against her was based on her forged signature on Garvin’s credit application. Plaintiff further alleges that she was denied the opportunity to prove the signature was a forgery because neither she nor Garvin’s was served with the small claims complaint. Instead, plaintiff asserts, WCP obtained a default judgment “and then proceeded to use the legal system’s mechanisms by which to unlawfully and fraudulently take monies and/or property from Plaintiff.” The record shows that the small claims court awarded WCP a judgment against Garvin’s and plaintiff in the sum of \$2,646.51 plus costs. The record does not show that plaintiff ever moved to set aside that judgment.

In her first cause of action, plaintiff alleges WCP and its employee defendants violated Business and Professions Code section 17200 “in that the defendants sought to obtain a judgment by fraud against the Plaintiff.” In her second cause of action plaintiff alleges slander based on WCP’s oral and written notices to the general public that plaintiff owed money to WCP. WCP’s statements are allegedly based on “the fabricated

and fraudulent conduct and charges as set forth above, and in reliance upon the fraudulent judgment [obtained by WCP].” Plaintiff’s third cause of action is for slander of title based on “lien rights [that] were obtained by . . . fraud as set forth herein.” The fourth cause of action alleges that WCP obtained its judgment against plaintiff “[t]hrough extrinsic fraud” consisting of her forged signature on the credit application.

WCP responded to plaintiff’s complaint with a motion to strike under the SLAPP statute, Code of Civil Procedure section 425.16.¹ Subdivision (b)(1) of the statute states in relevant part: “A cause of action against a person arising from any act of that person in furtherance of the person’s right of petition or free speech under the United States or California Constitution . . . shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.” Under subdivision (e) of the statute, an “act in furtherance of a person’s right of petition’ . . . includes: (1) any written or oral statement or writing made before a . . . judicial proceeding . . . ; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body” Thus, “statements, writings, and pleadings in connection with civil litigation are covered by the anti-SLAPP statute, and that statute does not require any showing that the litigated matter concerns a matter of public interest. [Citations.]” (*Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35.)

In its motion to strike, WCP contended plaintiff’s lawsuit against it arose from its small claims action against her; the small claims action was an act in furtherance of WCP’s right of petition under the United States and California constitutions; and that plaintiff had no probability of success on her suit because it is barred by the litigation privilege and her evidence of fraud on the part of WCP is too weak to be credited by any reasonable juror.

¹ All statutory references are to the Code of Civil Procedure unless otherwise stated.

Plaintiff opposed WCP's SLAPP motion on the grounds her lawsuit arose from "forgery and trickery that [WCP] committed" prior to initiating the small claims action and that she had presented sufficient evidence to make out a prima facie case on each of her causes of action.

The trial court granted the motion to strike. It found that plaintiff's complaint was subject to a SLAPP motion because it was "essentially a legal action based on a prior legal action." The court further found that plaintiff could not succeed on her claims against WCP because the claims were barred by the litigation privilege and, even if plaintiff could establish her signature on the credit application had been forged, she had no evidence that any employee or agent of WCP perpetrated the forgery. The court awarded WCR attorney fees in the amount of \$10,952.50.

Plaintiff filed a timely appeal.²

DISCUSSION

Section 425.16 requires the court to engage in a two-pronged analysis in determining whether to grant a defendant's SLAPP motion. First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one "arising from" the defendant's act in furtherance of the constitutional right of petition or free speech. (§ 425.16, subd. (b)(1).) If the court finds that the defendant has made such a showing, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim. (*Ibid*; *In re Episcopal Church Cases* (2009) 45 Cal.4th 467, 477.) On appeal our review is de novo. (*Schaffer v. City and County of San Francisco* (2008) 168 Cal.App.4th 992, 998.)

I. THE FIRST PRONG: DEFENDANT'S PETITIONING ACTIVITY

In deciding whether the defendant's acts complained of arose out of protected speech or petitioning, "the critical consideration is whether the cause of action is *based*

² An order granting or denying a SLAPP motion is immediately appealable. (§ 426.16, subd. (i).

on the defendant's protected free speech or petitioning activity.” (*Navallier v. Sletten* (2002) 29 Cal.4th 82, 89; italics in original.) In determining whether the cause of action is “based on” protected activity we look at the “‘gravamen or principal thrust’ of the action.” (*In re Episcopal Church Cases, supra*, 45 Cal.4th at p. 477. Therefore, in order to decide whether the SLAPP statute applies to a complaint that involves the defendant's prior lawsuit against the plaintiff we must determine whether the plaintiff's complaint actually targets the defendant's protected speech or petitioning activities. If it does, the defendant satisfies the first prong of the statute. (*Navallier v. Sletten, supra*, 29 Cal.4th at p. 90 [a defendant who is sued because of counterclaims filed in federal court has a prima facie First Amendment defense].)

Here, the allegations of plaintiff's complaint illustrate that it is entirely based on WCP's small claims action.

After the boilerplate allegations, the complaint states that in October 2005, “the defendants filed a lawsuit in Los Angeles small claims court” against Garvin's and plaintiff. The complaint next alleges: “Notwithstanding that the defendants alleged in the small claims action that Plaintiff executed a personal guarantee, in no way or under any circumstances did Plaintiff execute a personal guarantee for produce sold.” It continues that “the defendants knew or should have known that Plaintiff never signed a personal guarantee and was not liable for any goods allegedly sold and delivered in the small claims action.” Next it alleges that WCR never served plaintiff with the pleading in the small claims case and that after obtaining a default judgment against plaintiff, WCR “proceeded to use the legal system[']s mechanisms by which to unlawfully and fraudulently take monies and/or property from [her].” Plaintiff asserts that in the course of attempting to execute on the judgment WCR “maliciously included Plaintiff's social security [number] on court documents”

The cause of action for violation of Business and Professions Code section 17200 states that the unfair business practice WCR committed was seeking “to obtain a judgment by fraud against the Plaintiff.”

The slander of credit cause of action alleges WCR defamed plaintiff “in reliance upon the fraudulent judgment.” The slander of title claim alleges that it occurred “through fraud as set forth herein,” presumably a reference to the allegations that defendants obtained a judgment based on plaintiff’s forged signature and the fraudulent service of process.

Finally, the cause of action for extrinsic fraud alleges that in October 2005 “the defendants filed a lawsuit in Los Angeles small claims court . . . against [Garvin’s] and plaintiff” and “[t]hrough extrinsic fraud WCP obtained a judgment against plaintiff for \$2,646.51 plus \$126.00 in costs.”

These allegations demonstrate that plaintiff’s complaint is “based on” the judgment WCP obtained against her through its petitioning activity, the small claims action.

Plaintiff argues, however, that her causes of action arise from the unprotected activity of an employee or agent of WCP forging her name on the Garvin’s credit application. Plaintiff’s argument fails for the reason that a cause of action requires damages (*Committee On Children’s Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 219) and plaintiff suffered no damage from the alleged forgery until WCP obtained a judgment against her in its small claims action.

I. THE SECOND PRONG: PLAINTIFF’S PROBABILITY OF SUCCESS

In order to establish a probability of success on the merits, plaintiff must demonstrate that the complaint is both ““legally sufficient”” and supported by a ““sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.”” [Citation.]” (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1056.) Plaintiff’s opposition to WCP’s SLAPP motion fails to satisfy either of these requirements.

A plaintiff has no probability of success on the merits if her complaint is barred by the litigation privilege, Civil Code section 47, subdivision (b). (*Rusheen v. Cohen, supra*, 37 Cal.4th at p. 1065.) Here, the gravamen of all of plaintiff’s causes of action is WCP’S

procurement of a judgment against her based on the use of an allegedly forged signature and an allegedly perjured declaration of service. Because the evidence of the signature and the declaration of service were communications made in a judicial proceeding, by a litigant, to achieve the object of the litigation, and had a logical relation to the action, the litigation privilege operates to insulate WCP from liability for any of the claims arising from the small claims action. (*Id.* at p. 1062.)

In addition, plaintiff produced no evidence to support her “belief” that “WCP and/or its agents committed a forgery on the WCP credit application in order to add my name to the small claims action.”

DISPOSITION

The judgment is affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.^{*}

* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.